

APPEAL NO. 020939
FILED MAY 30, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 19, 2002. The appellant/cross-respondent (claimant) appeals, contending that the hearing officer erred in her determinations that the claimant is not entitled to supplemental income benefits (SIBs) for the fourth and fifth quarters. The claimant also contends that the hearing officer erred because she excluded portions of evidence offered by the claimant and admitted portions of evidence offered by the respondent/cross-appellant (carrier). The carrier conditionally appeals the hearing officer's determination that the claimant's unemployment was a direct result of his compensable injury.

DECISION

The hearing officer's decision is affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Conflicting evidence was presented at the CCH with regard to the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determinations that the claimant is not entitled to the fourth and fifth quarters of SIBs are supported by sufficient evidence. Accordingly, those determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Additionally, the hearing officer's determination that the claimant's unemployment is a direct result of his injury is supported by sufficient facts and is not against the great weight and preponderance of the evidence. Cain.

The claimant also appeals the hearing officer's decision to exclude portions of the claimant's evidence that were not timely exchanged pursuant to Rule 142.13(c) and the hearing officer's decision to admit portions of the carrier's evidence that the claimant contended were not relevant. To obtain reversal of a judgment based on the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was, in fact, an abuse of discretion and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; *see also Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). We find no abuse of discretion in the hearing officer's exclusion or admission of the documents.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DOROTHY C. LEADERER
1999 BRYAN STREET
DALLAS, TEXAS 75201.**

Roy L. Warren
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge